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RANDY V. J. SMALLWOOD,

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[Additional counsel on signature page]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re Silver Wheaton Corp. Securities  
Litigation

) Master File No. 2:15-cv-05146-  
) CAS(JEMx)

) c/w: 2:15-cv-05173-CAS(JEMx)

) CLASS ACTION

) **JOINT RULE 26(f) REPORT**

) JUDGE: Hon. Christina A. Snyder

) Complaint Filed: July 8, 2015

1 Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26-1, and the  
2 Judges' Procedures and Schedules for the Honorable Christina Snyder ("Court's  
3 Procedural Order"), Defendants Silver Wheaton Corp., Randy Smallwood, Peter  
4 Barnes, and Gary Brown (collectively, "Defendants") and Lead Plaintiff, through  
5 their undersigned counsel, held a telephonic conference on June 22, 2016 and  
6 hereby respectfully submit this Joint Rule 26(f) Report.

7 **I. STATEMENT OF THE CASE**

8 This is a securities class action alleging that Defendants violated Sections  
9 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the "Exchange Act").  
10 Plaintiffs allege that Silver Wheaton violated Canadian tax transfer pricing laws by  
11 attributing income of about USD\$567 million to its Cayman Islands Subsidiary  
12 ("Silver Wheaton Caymans") even though the income was in truth earned by Silver  
13 Wheaton's Canadian company ("Silver Wheaton Canada"), so as to evade payment  
14 of Canadian income taxes. Plaintiffs allege that as a result of its failure to pay  
15 Canadian income taxes, Silver Wheaton's financial statements from 2010 onwards  
16 violated Generally Accepted Accounting Principles ("GAAP"), and were therefore  
17 misleading, for (a) omitting to recognize a tax liability of USD \$207 million; or  
18 (b) omitting to disclose a contingent tax position liability of USD \$207 million,  
19 coupled with an indication of the uncertainties relating to the amount or timing of  
20 any outflow.

21 Defendants deny each and every allegation of wrongdoing in Plaintiffs'  
22 consolidated amended class action complaint (the "Complaint"), dispute that  
23 Plaintiffs have asserted any cognizable claims, and contend that they have no  
24 liability in the action. In particular, Defendants deny, among other things, that they  
25 made any actionable misstatements or omissions, acted with scienter, caused the  
26 alleged losses, or that Plaintiffs and the class have suffered any damages. Following  
27 discovery, Defendants may contend that the putative class cannot be certified in  
28 whole or in part.

1 **II. DISCOVERY PLAN**

2 **A. Rule 26(a)(1) Initial Disclosures and Changes (Fed. R. Civ. P.**  
 3 **26(f)(3)(A))**

4 The parties have agreed to exchange initial disclosures pursuant to Fed. R.  
 5 Civ. P. 26(a)(1) on August 15, 2016. Given the scope and complexity of the  
 6 allegations, instead of being produced or itemized categorically at the time initial  
 7 disclosures are made, documents will be produced in response to written requests  
 8 for production of documents in accordance with Fed. R. Civ. P. 34.

9 **B. Subjects of Discovery and Limitations (Fed. R. Civ. P. 26(f)(3)(B))**

10 The parties currently anticipate that discovery will be needed on a number of  
 11 subjects, including, among others, class certification and putative class members'  
 12 investments in Silver Wheaton securities; the elements of the securities claims  
 13 alleged in the Complaint (including falsity, scienter, reliance, loss causation and  
 14 damages); and, any affirmative defenses pled in Defendants' Answer to the  
 15 Complaint.

16 The parties will discuss the scope of discovery and limitations thereto as part  
 17 of the meet and confer process following the service of requests for production of  
 18 documents. Written fact discovery likely will include requests for production of  
 19 documents, interrogatories, and requests for admission. Plaintiffs anticipate that  
 20 discovery of several third party witnesses will take place in Canada, which is likely  
 21 to take additional time.

22 The parties exchanged proposed schedules for fact and expert witness  
 23 discovery and met and conferred regarding their respective positions. Following  
 24 discussion and subsequent communications regarding the proposed pretrial  
 25 schedule, the parties agreed upon a proposed schedule for fact and expert discovery  
 26 and the sequencing of discovery. The parties agree that document production  
 27 should be conducted prior to fact witness depositions. The parties reached an  
 28 agreement that expert discovery should occur after the close of fact discovery;

1 however, if an opposing expert relies upon facts that were not previously the subject  
2 of discovery, the parties agreed to meet and confer about further fact discovery and  
3 proposed modifications to the pre-trial schedule and, if agreement cannot be  
4 reached, reserve their respective rights to seek or oppose further fact discovery. The  
5 proposed schedule for discovery is set forth as part of the Proposed Pretrial  
6 Schedule in Exhibit A to this Report.

7 **C. Electronically Stored Information (Fed. R. Civ. P. 26(f)(3)(C))**

8 The parties discussed electronically stored information (“ESI”), including the  
9 form of production. Given the detailed nature of such matters, the parties have  
10 agreed to set forth the agreements regarding the protocol for the production of ESI  
11 in a separate joint stipulation.

12 **D. Privilege Procedures (Fed. R. Civ. P. 26(f)(3)(D))**

13 The parties will prepare privilege logs pursuant to Fed. R. Civ. P. 26(b)(5)(a).  
14 As discussed in Section II.F., *infra*, the parties are in the process of preparing a  
15 stipulated protective order that will be submitted to the Court for approval. The  
16 parties will include a provision in the protective order providing that the inadvertent  
17 production of privileged information shall not be deemed to waive applicable  
18 privileges or immunities that would otherwise attach to the protected information.

19 **E. Changes in Limitations on Discovery (Fed. R. Civ. P. 26(f)(3)(E))**

20 At this time, the parties see no reason to seek relief from the limits imposed  
21 by Fed. R. Civ. P. 33(a)(1) with regard to the 25 interrogatory limit per lead plaintiff  
22 and defendant to any other party. Plaintiffs believe that the ten (10) deposition limit  
23 imposed by Fed. R. Civ. P. 30(a)(2) should be increased to twenty (20). Defendants  
24 agree to meet and confer at a later date regarding the deposition limit.

25 **F. Other Orders (Fed. R. Civ. P. 26(f)(3)(F))**

26 The parties believe a protective order is appropriate in this matter to ensure  
27 the confidentiality of sensitive information that may be produced by parties and non-  
28 parties during the course of the litigation. The parties are in the process of meeting

1 and conferring regarding a protective order, which the parties will submit to the  
2 Court for approval.

### 3 **III. PRETRIAL SCHEDULE**

4 Attached as Exhibit A to this report is a chart summarizing the Proposed  
5 Pretrial Schedule agreed to by the Parties.

#### 6 **A. Class Certification**

7 Lead Plaintiff anticipates filing a motion for class certification. Lead  
8 Plaintiff's motion for class certification shall be filed by November 1, 2016; any  
9 opposition to the motion shall be filed by January 30, 2017; and, any reply  
10 memorandum in support of the motion shall be filed by March 15, 2017.

#### 11 **B. Motions to Amend Pleadings and/or Add Parties**

12 Motions to amend the pleadings and/or add parties, if any, shall be due by  
13 November 1, 2016.

#### 14 **C. Fact Discovery Cut-off (Court's Procedural Order)**

15 All fact discovery shall be completed by December 29, 2017.

#### 16 **D. Expert Discovery (Civ. L.R. 26-1(f))**

17 The schedule for disclosure of experts and expert reports is set forth below:

18 Opening expert reports February 15, 2018

19 Simultaneous exchange of rebuttal reports March 15, 2018

20 Experts shall be made available for deposition at mutually convenient times  
21 during the thirty (30) days following service of the rebuttal expert witness reports.  
22 All expert discovery shall be completed by April 16, 2018.

#### 23 **E. Dispositive Motions (Civ. L.R. 26-1(b); Court's Procedural Order)**

24 Defendants anticipate filing motions for summary judgment. Motions for  
25 summary judgment and/or summary adjudication shall be filed no later than May  
26 16, 2018; any opposition to such a motion shall be filed by July 16, 2018; and, any  
27 reply to such a motion shall be filed by August 17, 2018.

28 In the event that motions for summary judgment and/or summary adjudication

1 are filed prior to May 30, 2018, the parties agree to meet and confer regarding a  
2 comparable briefing schedule.

3 **IV. COMPLEXITY OF THE CASE/MANUAL FOR COMPLEX**  
4 **LITIGATION (Civ. L.R. 26-1(a))**

5 The above-captioned action is a complex action. The parties discussed the  
6 Manual for Complex Litigation (the “Manual”) and whether certain of the  
7 provisions may be useful in this action. The parties agreed to meet and confer  
8 further as necessary to discuss whether to adopt certain of the guidelines and  
9 procedures set forth in the Manual.

10 **V. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (Fed.**  
11 **R. Civ. P. 26(f)(2); Civ. L.R. 26-1(c); Court’s Procedural Order)**

12 No settlement discussions have occurred to date. A Notice to the Parties of  
13 Court-Directed ADR Program, Dkt. No. 6, was entered on July 8, 2015. Pursuant to  
14 Civil Local Rule 16-15.4 and the Court’s Procedural Order, the parties have agreed  
15 upon ADR Procedure No. 3, and have agreed to participate in a private dispute  
16 resolution proceeding by retaining a private mediator and engaging in mediation  
17 proceedings no later than forty-five (45) days before the final pretrial conference  
18 (Civ. L. R. 16-15.2).

19 **VI. TRIAL ESTIMATE (Civ. L.R. 26-1(d))**

20 Lead Plaintiff requests a trial by jury in the Complaint. At this time, the  
21 Parties believe it is premature to estimate the length of any trial.

22 **VII. ADDITIONAL PARTIES (Civ. L.R. 26-1(e))**

23 The parties do not presently anticipate that additional parties will be added to  
24 the action.

1 Dated: July 13, 2016

Respectfully submitted,

2 **WILSON SONSINI GOODRICH & ROSATI**  
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3  
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14 Attorneys for Defendants

15  
16 Dated: July 13, 2016

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17 By: /s/ Laurence M. Rosen

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28 Counsel for Lead Plaintiff

**EXHIBIT A**

<b>PROPOSED PRETRIAL SCHEDULE</b>	
<b><u>Event</u></b>	<b><u>Date/Deadline</u></b>
Initial Disclosures Exchange	August 15, 2016
Deadline to Amend Pleadings or Add Parties Without Leave of Court	November 1, 2016
Motion for Class Certification	
Opening Motion	November 1, 2016
Opposition	January 30, 2017
Reply	March 15, 2017
Fact Discovery Cut-Off	December 29, 2017
Expert Discovery	
Opening Expert Reports	February 15, 2018
Exchange of Rebuttal Reports	March 15, 2018
Expert Discovery Cut-Off	April 16, 2018
Summary Judgment/Adjudication Motions	
Opening Motion(s)	No later than May 16, 2018
Opposition(s)	July 16, 2018* <sup>1</sup>
Replies	August 17, 2018*
Meet and Confer JPTC and exchange exhibits	October 10, 2018
Pre-Trial Order	November 5, 2018
Pre-Trial Conference	November 19, 2018
Trial Date	TBD

<sup>1</sup> \*Subject to modification if earlier motions are filed.



1                                    ATTESTATION OF CONCURRENCE IN FILING

2            Pursuant to Local Rule 5-4.3.4 of the United States District Court for the  
3 Central District of California, I attest that Counsel for Lead Plaintiff Joe Elek and  
4 Counsel for Defendants Silver Wheaton, Smallwood, Barnes, and Brown have  
5 authorized the filing of this document.

6  
7                                    /s/ Diane M. Walters  
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